

## Securities and Exchange Commission

## § 270.15a-4

most recent previous annual continuance of such contract became effective.

(b) The provisions of paragraph (a) of this section shall not apply to any continuance of a contract which shall have been approved not later than 90 days after the date of adoption of this section, provided that such contract shall expire, by its terms, not later than 17 months from the date of adoption of this section.

NOTE: This section does not establish the exclusive method of complying with the Act. It provides one procedure by which a registered investment company may comply with the applicable provisions of sections 15(a) and 15(b) of the Act; it does not preclude any other appropriate procedure. Any annual continuance of a contract approved in accordance with the provisions of paragraph (a)(1) or (a)(2) of § 270.15a-2 will constitute a renewal of such contract for the purposes of section 15(c) of the Act, and therefore such renewal must be approved by the disinterested directors within the times specified in the section for a continuance.

[41 FR 41911, Sept. 24, 1976]

### **§ 270.15a-3 Exemption for initial period of investment adviser of certain registered separate accounts from requirement of security holder approval of investment advisory contract.**

(a) An investment adviser of a registered separate account shall be exempt from the requirement under section 15(a) of the Act that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of such registered separate account, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a-2, or is exempt therefrom by order of the Commission upon application; and

(2) Such written contract shall be submitted to a vote of variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended (15 U.S.C. 77a et seq.) relating to variable annuity contracts participating in such account: *Provided*, That such meeting shall take place within 1 year after such effective date, unless the time for

the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a-6)

[34 FR 12695, Aug. 5, 1969]

### **§ 270.15a-4 Temporary exemption for certain investment advisers.**

(a) For purposes of this section:

(1) *Fund* means an investment company, and includes a separate series of the company.

(2) *Interim contract* means a written investment advisory contract:

(i) That has not been approved by a majority of the fund's outstanding voting securities; and

(ii) That has a duration no greater than 150 days following the date on which the previous contract terminates.

(3) *Previous contract* means an investment advisory contract that has been approved by a majority of the fund's outstanding voting securities and has been terminated.

(b) Notwithstanding section 15(a) of the Act (15 U.S.C. 80a-15(a)), a person may act as investment adviser for a fund under an interim contract after the termination of a previous contract as provided in paragraphs (b)(1) or (b)(2) of this section:

(1) In the case of a previous contract terminated by an event described in section 15(a)(3) of the Act (15 U.S.C. 80a-15(a)(3)), by the failure to renew the previous contract, or by an assignment (other than an assignment by an investment adviser or a controlling person of the investment adviser in connection with which assignment the investment adviser or a controlling person directly or indirectly receives money or other benefit):

(i) The compensation to be received under the interim contract is no greater than the compensation the adviser would have received under the previous contract; and

(ii) The fund's board of directors, including a majority of the directors who are not interested persons of the fund, has approved the interim contract within 10 business days after the termination, at a meeting in which directors may participate by any means of communication that allows all directors

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participating to hear each other simultaneously during the meeting.

(2) In the case of a previous contract terminated by an assignment by an investment adviser or a controlling person of the investment adviser in connection with which assignment the investment adviser or a controlling person directly or indirectly receives money or other benefit:

(i) The compensation to be received under the interim contract is no greater than the compensation the adviser would have received under the previous contract;

(ii) The board of directors, including a majority of the directors who are not interested persons of the fund, has voted in person to approve the interim contract before the previous contract is terminated;

(iii) The board of directors, including a majority of the directors who are not interested persons of the fund, determines that the scope and quality of services to be provided to the fund under the interim contract will be at least equivalent to the scope and quality of services provided under the previous contract;

(iv) The interim contract provides that the fund's board of directors or a majority of the fund's outstanding voting securities may terminate the contract at any time, without the payment of any penalty, on not more than 10 calendar days' written notice to the investment adviser;

(v) The interim contract contains the same terms and conditions as the previous contract, with the exception of its effective and termination dates, provisions governed by paragraphs (b)(2)(i), (b)(2)(iv), and (b)(2)(vi) of this section, and any other differences in terms and conditions that the board of directors, including a majority of the directors who are not interested persons of the fund, finds to be immaterial;

(vi) The interim contract contains the following provisions:

(A) The compensation earned under the contract will be held in an interest-bearing escrow account with the fund's custodian or a bank;

(B) If a majority of the fund's outstanding voting securities approve a contract with the investment adviser

by the end of the 150-day period, the amount in the escrow account (including interest earned) will be paid to the investment adviser; and

(C) If a majority of the fund's outstanding voting securities do not approve a contract with the investment adviser, the investment adviser will be paid, out of the escrow account, the lesser of:

(1) Any costs incurred in performing the interim contract (plus interest earned on that amount while in escrow); or

(2) The total amount in the escrow account (plus interest earned); and

(vii)(A) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(B) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

[64 FR 68023, Dec. 6, 1999, as amended 66 FR 3758, Jan. 16, 2001]

**§ 270.16a-1 Exemption for initial period of directors of certain registered accounts from requirements of election by security holders.**

(a) Persons serving as the directors of a registered separate account shall, prior to the first meeting of such account's variable annuity contract owners, be exempt from the requirement of section 16(a) of the Act that such persons be elected by the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a-1 or is exempt therefrom by order of the Commission upon application; and

(2) Such persons have been appointed directors of such account by the establishing insurance company; and

(3) An election of directors for such account shall be held at the first meeting of variable annuity contract owners after the effective date of the registration statement under the Securities Act of 1933, as amended (15 U.S.C.